

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 1:12 cr37
)	
AMINE EL-KHALIFI)	

SUPPLEMENT TO POSITION OF THE
GOVERNMENT WITH RESPECT TO SENTENCING

In its position on sentencing filed on September 7, 2012, the United States stated that it had no objection to the guideline calculations contained in the Pre-Sentence Report ("PSR"). That statement was correct, but we neglected to note that an important fact included in the initial draft of the PSR distributed to the parties was deleted without mention from the final version.

The initial draft of the PSR stated that, in addition to the activity described in the Statement of Facts,

federal investigators advised that sometime in July 2010, a terrorist facilitator in Kandahar, Afghanistan, placed a "post" to his Facebook page on the Internet. The individual wrote, "If you want to join the Mujahidin, contact me." The defendant responded on this individual's Facebook page, asking the individual to contact him.

ECF Document #27, at Paragraph 7.

In response to that draft of the PSR, the defendant's counsel wrote the Probation Officer that the defendant did not recall the event described in that paragraph, and objected to its inclusion in the PSR because the defense could not verify its authenticity. We then wrote the Probation Officer that the only evidence of the posts possessed by the government was the report made by the agent who recounted what was reported to him by a confidential informant.

Without further communications about the subject, the Probation Officer deleted the paragraph from the final PSR. Regardless of whether the information in that original Paragraph 7 is contained in the final PSR, the Court should consider it for at least two reasons.¹ First, the information explains, in part, why the FBI undercover officers contacted the defendant in the first place. Second, the information reflects that the defendant tried to contact foreign terrorist groups long before he tried to bomb the United States Capitol Building with the assistance of what he thought were representatives of Al-Qaeda.

The report that was the basis for the information in question, along with other information from the confidential informant (hereinafter referred to as "CHS-1"), was provided to defense counsel in discovery before the defendant entered his guilty plea. For example, on May 8, 2012, the government provided to the defense the information in question, as well as the fact that CHS-1 also reported in the summer of 2010 that the defendant posted on his Facebook page what appeared to be a video of the beheading of an American involving Al-Qaeda leader Abu Al-Zarqawi, and numerous videos of suicide bombings and calls for Muslims to attack the West.

On May 8, 2012, the government further notified the defense that, in February 2011, CHS-1 notified investigators that the defendant posted on his Facebook page an image (saved in a snapshot by CHS-1) of a man on horseback silhouetted against the burning ruins of a skyscraper and carrying the black flag associated with Al Qaeda and related terrorist organizations² - - and that in April 2011, CHS-1 notified investigators that, on March 27, 2011, the defendant posted (and "liked") a message

¹ See 18 U.S.C. § 3661 (no limitation shall be placed on the information concerning the conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence).

² On June 5, 2012, we provided to the defense the snapshot captured by CHS-1.

purportedly from Usama Bin Laden calling for the destruction of the United States. On May 8, 2012, the government also notified the defense that CHS-1 had never met the defendant, but would be available to testify at trial.

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2012, I electronically filed the foregoing
SUPPLEMENT TO POSITION OF THE GOVERNMENT WITH RESPECT TO SENTENCING
with the Clerk of Court using the CM/ECF system, which will send a notification of such filing
(NEF) to the following:

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/s/

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